

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7508

Petition of Georgia Mountain Community Wind, LLC,)
for a certificate of public good, pursuant to 30 V.S.A.)
Section 248, authorizing the construction and operation)
of a 5-wind turbine electric generation facility, with)
associated electric and interconnection facilities, on)
Georgia Mountain in the Towns of Milton and Georgia,)
Vermont, to be known as the "Georgia Mountain)
Community Wind Project")

Order entered: 5/13/2011

ORDER RE: CONSERVATION EASEMENT

Introduction

On June 11, 2010, the Public Service Board ("Board") issued an Order and Certificate of Public Good ("CPG") approving construction of a wind generation facility by Georgia Mountain Community Wind, LLC ("GMCW"). The June 11 CPG included several conditions that GMCW must meet prior to the start of construction, including condition 26, which states:

GMCW shall file a proposal, for Board approval, for conserving the Project area as required in the section of this Order addressing rare and irreplaceable natural areas. Parties will have three weeks, from the date this plan is filed with the Board, to comment on the plan. GMCW cannot commence construction until the plan is approved.

On January 13, 2011, GMCW submitted a proposed conservation easement deed and map.

On March 28, 2011, GMCW submitted a revised conservation easement deed and map. (Copies of the deed and map are attached to this Order.) GMCW represents that the Agency of Natural Resources finds the deed and map to be acceptable.

In this Order we conclude that, with the clarification discussed below, the deed and map satisfy condition 26 of the CPG.

Background

On March 28, 2011, GMCW filed a revised conservation easement deed ("Deed") and map. The March 28 Deed and map provide perpetual conservation restrictions for 108 acres of state-significant natural communities, wetlands, and wildlife habitat. The easement allows the protected property to be used for only forestry, outdoor recreational and open-space purposes. In addition, the Deed prohibits the use of all-terrain vehicles in certain portions of the protected area.

Comments on the Plan

No party filed comments on the conservation easement deed and map.

Discussion and Conclusion

We approve the March 28 conservation easement deed and map, with the following clarification, and conclude that the documents meet the requirements of condition 26.

Article III, paragraph 5 of the Deed states that H.W. Ventures, LLC, has the right to "construct, install, maintain, repair, replace, re-construct, re-install, realign, relocate, upgrade, use, operate, decommission, de-construct and *abandon in place* a wind farm project as approved by the Vermont Public Service Board in Docket 7508" (Emphasis added). The Board's June 11 Order approving the project specifically requires that GMCW file a plan to decommission the project at the end of its useful life. Portions of the project may be abandoned in place only if such abandonment is consistent with the approved decommission plan (e.g., certain equipment or structures that are located a set number of feet below grade).

SO ORDERED.

Dated at Montpelier, Vermont, this 13th day of May, 2011.

s/ James Volz)

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PUBLIC SERVICE

)

s/ David C. Coen)

)

BOARD

)

OF VERMONT

s/ John D. Burke)

OFFICE OF THE CLERK

FILED: May 13, 2011

ATTEST: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

**GRANT OF DEVELOPMENT RIGHTS
AND CONSERVATION EASEMENT AND RESTRICTIONS**

KNOW ALL PERSONS BY THESE PRESENTS that **H. W. Ventures, L.C.**, a limited liability company organized under the laws of the State of Vermont with its principal place of business located in Georgia, Vermont, on behalf of itself and its successors and assigns (hereinafter "Grantor"), pursuant to Title 10 V.S.A. Chapters 34 and 155 and in consideration of the payment of Ten Dollars (\$10.00) and other valuable consideration paid to its full satisfaction, does freely give, grant, sell, convey and confirm unto the _____ [a nonprofit or governmental entity qualified to hold conservation easements designated by the Agency of Natural Resources], and its successors and assigns (hereinafter "Grantee"), forever, the development rights and conservation easement and restrictions (all as more particularly set forth below) in a certain tract of land (hereinafter "Protected Property") situated in the Town of Milton, Chittenden County, State of Vermont, said Protected Property being more particularly described in **Schedule A** attached hereto and incorporated herein.

The development rights hereby conveyed to Grantee shall include all development rights except those specifically reserved by Grantor herein and those reasonably required to carry out the permitted uses of the Protected Property as herein described. The conservation easement and restrictions hereby conveyed to Grantee consist of covenants on the part of Grantor to do or refrain from doing, severally and collectively, the various acts set forth below. It is hereby acknowledged that said development rights and conservation easement and restrictions shall constitute a servitude upon the land and shall run with the land in perpetuity, subject to termination as provided below. Grantor conveys said rights and interests in order to conserve the Protected Property's natural communities, wetlands and wildlife habitat, all as more particularly described in Section I below.

I. Purposes of the Grant.

Grantor and Grantee acknowledge that the purposes of this Grant are to protect and maintain state-significant natural communities on the Protected Property as identified by the State of Vermont Agency of Natural Resources and to conserve wetlands and wildlife habitat on the Protected Property.

These purposes will be advanced by conserving the Protected Property because it possesses the following attributes:

- a) The Dry Oak Hickory Hophornbeam and White Pine Red Oak Black Oak forests located on the Protected Property are high quality examples of natural communities uncommon in the State of Vermont, and each individually is considered a state-significant natural community by the Vermont Agency of Natural Resources;

- b) The association of such individually significant natural communities with other natural communities located on and adjacent to the Protected Property, including Mesic Red Oak Northern Hardwood and Northern Hardwood forests, is also considered state-significant by the Vermont Agency of Natural Resources;
- c) A vernal pool and other Class 3 wetlands located on the Protected Property are important for wildlife functions including amphibian breeding habitat and feeding/watering habitat for birds and other mammals; and
- d) The forests on Protected Property provide valuable habitat for wildlife.

Grantor and Grantee further acknowledge that this Grant is intended to serve the purposes both with respect to the natural resources values of the Protected Property as they exist on the date of this Grant and with respect to such natural resources as they may naturally evolve in the future. The Permitted Uses afforded Grantor under this Grant shall be exercised in a manner that is not inconsistent with the purposes of this Grant.

Grantor and Grantee recognize the natural community, wetlands and wildlife habitat values of the Protected Property, and share the common purpose of conserving these values by the conveyance of development rights and conservation easement and restrictions to prevent the use or development of the Protected Property for any purpose or in any manner which would conflict with the continued protection and maintenance of these natural resources. Grantee accepts such development rights and conservation easement and restrictions in order to conserve these values for present and future generations.

II. Restricted Uses of Protected Property.

The restrictions hereby imposed upon the Protected Property, and the acts which Grantor shall do or refrain from doing, are as follows:

- 1. The Protected Property shall be used for forestry, outdoor recreational and open space purposes only. There shall be no residential, commercial, industrial, or mining activities, and no building, structure or appurtenant facility or improvement, including but not limited to telecommunications and renewable energy facilities, shall be constructed, created, installed, erected or moved onto the Protected Property. Nothing in this paragraph shall prohibit Grantor from charging admission or a fee for access to or use of the Protected Property, or for recreational programs operated on the Protected Property.
- 2. No driveways, roads, or utility lines, or rights of way or easements for the same, shall be constructed, developed or maintained into, on, over, under, or across the Protected Property, without the prior written approval Grantee and the Vermont Agency of Natural Resources. Grantee may grant such approval if it determines, in its sole discretion, that any such improvement would be consistent with the purposes of this Grant.
- 3. There shall be no signs, billboards, or outdoor advertising of any kind erected or displayed on the Protected Property; provided, however, that Grantor may, with

prior written approval of Grantee, erect and maintain reasonable signs including, but not limited to, signs indicating the name of the Protected Property and its ownership by Grantor, boundary markers, informational signs, signs limiting access or use and other directional signs, and signs informing the public that forestry products are for sale or are being grown on the premises. Grantee may erect and maintain a sign designating the Protected Property as land under the protection of Grantee.

4. There shall be no placement, collection or storage of trash, human waste or any other unsightly or offensive material on the Protected Property.
5. There shall be no disturbance of the surface, including, but not limited to, filling, excavation, removal of topsoil, sand, gravel, rocks or minerals, or change of the topography of the land in any manner, except as may be reasonably necessary to carry out the uses permitted on the Protected Property under the terms of this Grant. In no case shall surface mining of subsurface oil, gas, or other minerals be permitted.
6. There shall be no manipulation of natural watercourses, wetlands or other water bodies, nor shall there be activities conducted on the Protected Property which would be detrimental to water purity, or which could alter natural water level or flow, except as reasonably necessary to carry out the uses permitted on the Protected Property under this Grant.
7. There shall be no development, clearing, construction or maintenance of all-terrain vehicle or snowmobile trails or other trails for motorized recreation.
8. There shall be no operation of automobiles, trucks, tractors, bulldozers, skidders, motorcycles, all-terrain vehicles, snowmobiles, bicycles or other motorized or mechanized vehicles, and no organized recreational activities, within the limits of the Class 3 vernal pool wetland identified as No. 31 on the survey plan of the Protected Property referenced in **Schedule A**.

III. Permitted Uses of the Protected Property.

Notwithstanding the foregoing, Grantor shall have the right to make the following uses of the Protected Property (except within the limits of the Class 3 vernal pool wetland identified in Paragraph 8 above):

1. The right to construct, install, maintain, repair, replace, re-construct, re-install, realign, relocate, upgrade, use, operate, decommission, de-construct and abandon in place a wind farm project as approved by the Vermont Public Service Board in Docket No. 7508, including but not limited to wind turbines, a maintenance/control building, electric transformers, electric collector lines and poles, access roads, fences and related buildings, improvements and equipment.

2. The right during the operation and during decommissioning of the wind farm described in Paragraph 1 above to use the access roads to the wind turbine sites for the purposes described in the following paragraphs of this Article III.
3. The right during operation and during decommissioning of the wind farm described in Paragraph 1 above to maintain and use the other access roads existing on the Protected Property as of the date of this Grant, as realigned or relocated in connection with the wind farm project, for the purposes described in the following paragraphs of this Article III.
4. The right, after decommissioning of the wind farm described in Paragraph 1 above, to continue to maintain and use access roads for the purposes described in the following paragraphs of this Article III, including the right to clear trees, brush and other vegetation, and to keep such vegetation cleared, within a strip of land up to twelve feet (12') in width, and to construct water bars and other erosion control improvements for such access roads, provided that the Grantor shall restore the access road surfaces upon such decommissioning to approximate the condition of the access roads existing in the same area prior to the construction of the wind farm, and may scarify the road surface, install pockets of topsoil along the road surface, and undertake other restoration work as approved by the Public Service Board to encourage storm water infiltration and re-establishment of vegetation along the edges of the road surface in order to restore the area to its to pre-construction conditions to the extent practical.
5. The right to authorize the Vermont All-Terrain Vehicles Sportman's Association or another non-profit organization with similar purposes to continue to maintain and use, as all-terrain vehicle trails, two access roads located mostly on the Protected Property that are maintained and used for such purpose as of the date of this Grant, as such access roads may be realigned or relocated, or replaced by wind farm access roads, in connection with the wind farm project described in Paragraph 1 above, provided that the access road and all-terrain vehicle trail that currently passes near the Class 3 vernal pool wetland identified in Paragraph 8 above shall be realigned, relocated, restricted or closed so as to prohibit recreational use of such access road by all-terrain vehicles within Dry Oak Hickory Hophornbeam and White Pine Red Oak Black Oak forests or within 200 feet of the limits of such wetland; the two access roads currently used as all-terrain vehicle trails are depicted as an "Existing ATV Trail" on the survey plan of the Protected Property referenced in **Schedule A**.
6. The right to use the Protected Property for hiking, running, horseback riding, bicycling, cross-country skiing, snowshoeing, hunting, trapping, bird-watching, camping and other non-motorized, recreational activities consistent with the purposes of this Grant, and to construct, install maintain, repair, replace, realign, relocate, upgrade and use trails for such purposes.

7. The right to charge admission or a fee or otherwise obtain consideration for uses and activities otherwise permitted by this Grant, including but not limited to recreational activities conducted by or with the approval of Grantor.
8. The right to conduct maple sugaring operations and to produce and harvest timber and other forest crops, together with the right to construct, install, maintain repair, replace, realign, relocate, upgrade and use woods roads and trails necessary for such activities, in accordance with generally accepted forestry practices and a written forest management plan that complies with any minimum standards applicable to forest management plans under the Vermont Managed Forest Land Use Valuation Program or any successor thereto, as such forest management plan may be revised and updated from time to time.

IV. Public Access.

After prior consultation, Grantor and/or Grantee may limit or restrict public access to the Protected Property to assure compliance with the requirements of this Grant, and to protect the integrity of natural communities, wetlands and wildlife habitat.

V. Enforcement of the Restrictions.

Grantee may make periodic inspection of all or any portion of the Protected Property, and for such inspection and enforcement purposes, Grantee shall have the right of reasonable access to the Protected Property. Prior to commencing any proceeding to enforce this Grant on account of an event or circumstance of non-compliance with the terms and conditions herein set forth, Grantee shall give written notice to Grantor of such event or circumstance of non-compliance via certified mail, return receipt requested, specifying the corrective action by Grantor required to abate such event or circumstance of non-compliance and restore the Protected Property to its required condition. In the event there has been an event or circumstance of non-compliance which is corrected through negotiation and voluntary compliance, Grantor shall, at Grantee's request, reimburse Grantee for all reasonable costs incurred in investigating the non-compliance and in securing its correction.

Failure by Grantor to cause discontinuance, abatement, or such other corrective action as may be demanded by Grantee within a reasonable time after receipt of notice and reasonable opportunity to take corrective action shall entitle Grantee to bring an action in a court of competent jurisdiction to enforce the terms of this Grant and to recover any damages arising from such non-compliance. Such damages, when recovered, may be applied by Grantee to corrective action on the Protected Property, if necessary. If the court determines that Grantor has failed to comply with this Agreement, Grantor shall reimburse Grantee for any reasonable costs of enforcement, including court costs and reasonable attorneys' fees, in addition to any other payments ordered by such court. In the event that Grantee initiates litigation and the court determines that Grantor has not failed to comply with this Agreement and that Grantee has initiated litigation without reasonable cause or in bad faith, then Grantee shall reimburse Grantor for any reasonable costs of defending such action, including court costs and reasonable attorneys' fees; provided this clause shall not apply to any Grantee protected by the doctrine of sovereign immunity. The parties to this Grant specifically acknowledge that events and circumstances of non-compliance constitute immediate and irreparable injury, loss, and damage

to the Protected Property and accordingly entitled Grantee to such equitable relief, including, but not limited to, injunctive relief, as the court deems just. The remedies described herein are in addition to, and not in limitation of, any other remedies available to Grantee at law, in equity, or through administrative proceedings.

No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair Grantee's rights or remedies or be construed as a waiver. Nothing in this enforcement section shall be construed as imposing a liability upon a prior owner of the Protected Property, where the event or circumstance of non-compliance shall have occurred after said prior owner's ownership or control of the Protected Property has terminated.

The State of Vermont Agency of Natural Resources is an intended beneficiary of this Grant and shall have all of the enforcement rights of the Grantee, as set forth above.

VI. Miscellaneous Provisions.

1. Where Grantor is required, as a result of this Grant, to obtain the prior written approval of Grantee before commencing an activity or act, and where Grantee has designated in writing another organization or entity which shall have the authority to grant such approval, the approval of said designee shall be deemed to be the approval of Grantee, provided that Grantor has given its written consent to such designation, which consent shall not be unreasonably withheld. Grantor shall reimburse Grantee or Grantee's designee for all extraordinary costs, including staff time, incurred in reviewing the proposed action requiring Grantee's approval; but not to include those costs which are expected and routine in scope. When Grantee has authorized a proposed action requiring approval under this Grant, Grantee shall, upon request, provide Grantor with a written certification in recordable form memorializing said approval.

2. It is hereby agreed that any use of the land otherwise permitted under this Grant, shall be in accordance with all applicable ordinances, statutes and regulations of the Town of Milton and the State of Vermont.

3. Grantee shall transfer the development rights and conservation easement and restrictions conveyed by Grantor herein only to a State agency, municipality, or qualified organization, as defined in Chapter 34 or Chapter 155, Title 10 V.S.A., in accordance with the laws of the State of Vermont and the regulations established by the Internal Revenue Service governing such transfers.

In the event the development rights or conservation easement and restrictions conveyed to Grantee herein are extinguished by eminent domain or other legal proceedings, Grantee shall be entitled to any proceeds that pertain to the extinguishment of Grantee's rights and interests. Any proceeds from extinguishment shall be allocated between Grantor and Grantee using a ratio based upon the relative value of the development rights and conservation restrictions, and the value of the fee interest in the Protected Property, as determined by a qualified appraisal performed at the direction of either Grantor or Grantee in the year of this conveyance. Grantee shall use any such proceeds to preserve undeveloped and open space land in order to protect the aesthetic, cultural, educational, scientific, and natural resources of the state through non-regulatory means.

4. In any deed or lease conveying an interest in all or part of the Protected Property, Grantor shall make reference to the conservation easement and restrictions and obligations described herein and shall indicate that said easement and restrictions are binding upon all successors in interest in the Protected Property in perpetuity. Grantor shall also notify Grantee of the name(s) and address(es) of Grantor's successor(s) in interest.

5. Grantee shall be entitled to record this Grant, or to record a notice making reference to the existence of this Grant, in the Milton Land Records as may be necessary to satisfy the requirements of the Record Marketable Title Act, 27 V.S.A., Chapter 5, Subchapter 7, including 27 V.S.A. §§ 603 and 605.

6. The term "Grantor" shall include the successors and assigns of the original Grantor, **H. W. Ventures, L.C.** The term "Grantee" shall include the successors and assigns of the original Grantee, _____.

INVALIDATION of any provision hereof shall not affect any other provision of this Grant.

TO HAVE AND TO HOLD said granted development rights, conservation easement and restrictions, with all the privileges and appurtenances thereof, to the said Grantee, _____, its successors and assigns, to their own use and behoof forever, subject to the termination provision set forth below, and the said Grantor, **H. W. Ventures, L.C.**, for itself and its successors and assigns, does covenant with the said Grantee, its successors and assigns, that until the sealing of these presents, it is the sole owner of the premises, and has good right and title to convey the same in the manner aforesaid, that the premises are free from every encumbrance, except for a right of way for ingress and egress granted to Silver Bow Communications by the Corrective Warranty Deed of H. W. Ventures, L.C. dated April 10, 2003, recorded in Book ___, Page ___ of the Milton Land Records, and for any other rights of way, easements and use restrictions of record, and it hereby engages to warrant and defend the same against all lawful claims whatever, except as aforesaid.

IN WITNESS WHEREOF, _____, duly authorized agent of **H. W. Ventures, L.C.**, sets his hand and seal this ____ day of _____, 2011.

H. W. Ventures, L.C.

By _____
Its duly authorized agent

STATE OF VERMONT
FRANKLIN COUNTY, SS.

At Georgia, this _____ day of _____, 2011, _____, the
duly authorized agent of H. W. Ventures, L.C., personally appeared and he acknowledged this
instrument by him sealed and subscribed, to be his free act and deed and the free act and deed of
H. W. Ventures, L.C.

Before me, _____

Notary Public

My Commission Expires: _____

Schedule A

Legal Description of the Protected Property

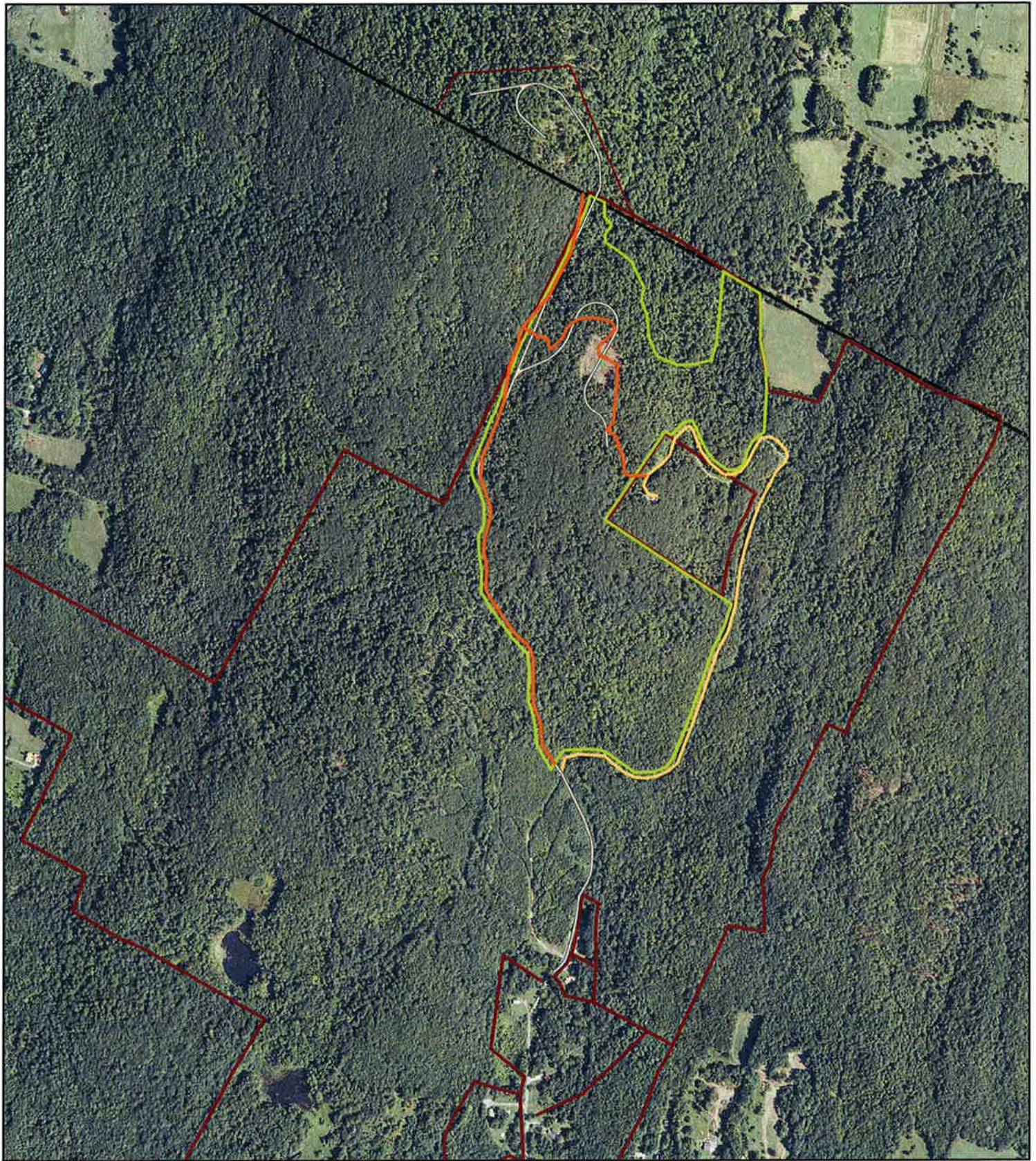
The Protected Property is a portion only of the lands and premises conveyed to HW Ventures, L.C. by the Quit Claim Deed of James A. Harrison, Janet A. Harrison, Roger H. Wright and Brenda L. Wright, dated August 20, 1997, recorded in Book 185, Page 144 of the Milton Land Records:

The Protected Property contains approximately 108 acres of forest land surrounding a wind farm project site at the top of Georgia Mountain, so-called. The Protected Property is depicted in a survey plan prepared by Cross Consulting Engineers, P.C., entitled "_____", dated _____, 2010, recorded with this Grant in the Milton Land Records, and is more particularly described as follows:

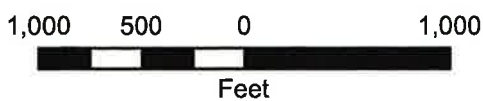
[Insert metes and bounds description to be drafted, based on the survey plan. The approximate boundaries of the Protected Property are shown in a map of the Protected Property prepared by Vermont Environmental Research Associates entitled "Georgia Mountain Community Wind, 108 Acres," dated February 28, 2011. As depicted in the VERA map, the Protected Property is bounded in part on the east by the cell tower parcel now or formerly of Independent Towers of Vermont, LLC, the right of way for the access road to the cell tower parcel, and portions of the east property line of H.W. Ventures, L.C.; on the north in part by the north property line of H.W. Ventures, L.C. and in part by an area of Northern Hardwood forest, and on the west by the west limits of clearing for the wind farm access road. The Protected Property does not include any portion of the 60 foot wide right of way for the cell tower access road.]




The Protected Property contains portions of two access roads used as all-terrain vehicle trails, each depicted as an "Existing ATV Trail" on the aforesaid survey plan [see the VERA map for the approximate alignment of the existing all-terrain vehicle trails].

4194943.5



Georgia Mountain Community Wind
Conservation Easement Area
108 Acres



-  Easement Area
-  Existing cell tower road
-  Existing ATV trail

Prepared for Georgia Mountain Community Wind LLC
Prepared by Vermont Environmental Research Associates Inc
February 28, 2011

Georgia Mountain Community Wind Project, PSB Docket No. 7508
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